IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGEMENT NO.111 OF 2004
IN
SUMMARY SUIT NO.3689 OF 2003

Vijay Engineering & Machinery Company ... Plaintiff

versus

M/s.Universal Fan (India) Pvt. Ltd. ... Defendant

Mr.S.N.Fadia i/by Uma S. Fadia for plaintiff.
None for defendant.

CORAM : S.C.DHARMADHIKARI, J.
DATE : 6th June 2005

PC :

1. Mr.Fadia appearing for the plaintiffs undertakes to file affidavit proving service of the Summons for Judgement on the Advocate appearing for defendants. Undertaking accepted. Undertaking to be filed within one week from today.

2. Heard Mr.Fadia and with his assistance perused the plaint and the annexures. The suit is filed under the provisions of Order XXVII of Code of Civil Procedure, 1908 for recovery of amounts due under a written contract as evidenced by the invoices and delivery challans. The

plaint averments demonstrate that not only the goods have been accepted without any protest but part payments have been made for which due credit has been given to the defendants. Now the balance amount under the bills/invoices is claimed.

3. In the light of clear provisions of Order 37 of CPC, once appearance is entered and a Summons for Judgement is taken out and duly served on the Advocate appearing for the defendants, it is obligatory on the part of defendant's Advocate to apply for leave to defend the summary suit. Neither such an application is made nor any affidavit is filed. The Summons for Judgement is taken out on 20th January 2004 and service thereof is complete, as evidenced by the postal acknowledgement long back. None appeared for the defendant even today.

4. In the result, there shall be a decree as prayed. Refund as well as Advocate's fee as per Rules.

(S.C.DHARMADHIKARI, J.)